REMARKS

This Amendment is being filed in response to the Final Office Action mailed October 14, 2008 which has been reviewed and carefully considered. Entry of the present amendment and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-6 remain in this application, where claims 7-20 have been canceled without prejudice. Applicant reserves the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications. Claim 1 is independent.

In the Final Office Action, claim 20 is objected to and rejected under 35 U.S.C. §112, second paragraph for certain informalities. Without agreeing with the position forwarded in the Office Action and in the interest of advancing prosecution, claim 20 has been canceled without prejudice. The cancellation of claim 20 renders moots the objection and rejection thereto.

In the Final Office Action, claims 1 and 4-6 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent Application Publication No. 2003/0227846 (Lee) in view of U.S.

Patent No. 6,738,329 (Hsiao). Further, claims 2-3 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Lee in view of Hsiao and U.S. Patent Application Publication No. 2003/0137910 (Ueda). Claim 20 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Lee in view of Hsiao and Applicant's Admitted Prior Art (AAPA). It is respectfully submitted that claims 1-6 are patentable over Lee, Hsiao, Ueda and AAPA for at least the following reasons.

Lee is directed to a multi-layer recording medium for storing write protection information, and a recording method and a write protection method thereof. As correctly noted on page 3 of the Final Office Action, Lee does not disclose or suggest an OPC area variable located on the layers. Hsiao is cited in an attempt to remedy the deficiencies in Lee.

Hsiao is directed to a method of optimal power calibration adapted to an optical storage medium such as a rewritable (CD-RW) disk. In Hsiao OPC processes write erasable patterns so that these erasable patterns will be overwritten by sequentially recording data. A relation curve, which indicates the relationships between optimal recording powers of a recording position and the distance

from the center of the rewritable disk to the recording position, is then established by using the optimal recording powers measured from the OPC processes.

It is respectfully submitted that Lee, Hsiao, and combination thereof, do not disclose or suggest the present invention as recited in independent claim 1 which, amongst other patentable elements, recites (illustrative emphasis provided):

> said Optimum Power Control procedure being performed in OPC-areas on the disk including an OPC-area positioned on the second layer located relatively close to a radius where the data stream **switches from the first layer to the second layer**.

Performing OPC procedure in an OPC-area positioned on the second layer located relatively close to a radius where the data stream switches from the first layer to the second layer is nowhere disclosed or suggested in Lee and Hsiao, alone or in combination.

Ueda and AAPA are cited to allegedly show other features and do not remedy the deficiencies in Lee and Hsiao. Accordingly, it is respectfully submitted that independent claim 1 is allowable. In additions, claims 2-5 are allowable at least based on their dependence from independent claim 1.

In addition, Applicant denies any statement, position or

averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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